

HOUSE BILL 1470

C4

(0lr3363)

ENROLLED BILL

— *Economic Matters/Finance* —

Introduced by **Delegates Rudolph, Miller, and Niemann**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Title Insurance – Title Insurers and Title Insurance Producers – Regulation**
3 **and Reports**

4 FOR the purpose of providing that a title insurance producer independent contractor
5 ~~who is the agent~~ provides certain services that may result in issuance of a title
6 insurance contract by or on behalf of a title insurance producer is not required
7 to file a certain fidelity bond, surety bond, or letter of credit with the Maryland
8 Insurance Commissioner under certain circumstances; prohibiting a title
9 insurance producer from using or accepting the services of a title insurance
10 producer independent contractor unless the title insurance producer
11 independent contractor is covered under the title insurance producer's fidelity
12 bond and surety bond or letter of credit; providing that a title insurance
13 producer that uses the services of a title insurance producer independent
14 contractor is the legal principal of the title insurance producer independent
15 contractor and is liable for certain actions of the title insurance producer

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 independent contractor; requiring any mortgage or deed of trust executed by in
 2 a transaction in which a title insurance producer independent contractor as the
 3 agent acts for or on behalf of a title insurance producer to include certain
 4 information; requiring the Maryland Insurance Commissioner to conduct a
 5 certain study, adopt certain regulations, examine a certain rate review and
 6 approval process, and report certain information to certain committees of the
 7 General Assembly; requiring the Maryland Insurance Administration and the
 8 Department of Labor, Licensing, and Regulation to develop a certain document
 9 and make it available on their websites, adopt certain regulations, share certain
 10 information, and report certain information to certain committees of the
 11 General Assembly; altering a certain definition; and generally relating to title
 12 insurers and title insurance producers.

13 BY repealing and reenacting, without amendments,
 14 Article – Insurance
 15 Section 10–101(a) and 10–121(e), (g), and (k)
 16 Annotated Code of Maryland
 17 (2003 Replacement Volume and 2009 Supplement)

18 BY repealing and reenacting, with amendments,
 19 Article – Insurance
 20 Section 10–101(j), 10–121(n), and 10–121.1
 21 Annotated Code of Maryland
 22 (2003 Replacement Volume and 2009 Supplement)

23 BY adding to
 24 Article – Insurance
 25 Section 10–121(n)
 26 Annotated Code of Maryland
 27 (2003 Replacement Volume and 2009 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 29 MARYLAND, That the Laws of Maryland read as follows:

30 **Article – Insurance**

31 10–101.

32 (a) In this subtitle the following words have the meanings indicated.

33 (j) “Title insurance producer independent contractor” means a person that:

34 (1) is licensed to act as a title insurance producer;

35 (2) provides escrow, closing, or settlement services that may result in
 36 the issuance of a title insurance contract as an independent contractor for, or on behalf
 37 of, a licensed and appointed title insurance producer; and

1 (3) is not an employee of[, or associated with,] the licensed and
2 appointed title insurance producer.

3 10–121.

4 (e) (1) In addition to meeting any of the applicable requirements for a
5 license to act as an insurance producer under this subtitle, a sole proprietor, a limited
6 liability company, a partnership, or a corporate applicant for a license as a title
7 insurance producer shall file with the Commissioner:

8 (i) a blanket fidelity bond covering appropriate employees and
9 title insurance producer independent contractors; and

10 (ii) 1. a blanket surety bond; or

11 2. a letter of credit.

12 (2) Unless the Commissioner approves a lesser amount, each bond or
13 letter of credit shall be for \$150,000.

14 (3) The Commissioner may adopt regulations that specify when it is
15 appropriate for a bond or letter of credit to be less than \$150,000.

16 (4) Notwithstanding paragraph (2) of this subsection, the
17 Commissioner may waive the requirement for a bond or letter of credit if the
18 Commissioner finds that bonds are not generally available or reasonably affordable.

19 (5) The Commissioner shall make a specific finding that states the
20 reason for accepting a bond or letter of credit for less than \$150,000.

21 (g) The title insurance producer shall file the bond or letter of credit with the
22 Commissioner:

23 (1) after the Commissioner notifies the title insurance producer of the
24 approval of the application for a license; and

25 (2) before the Commissioner issues the license.

26 (k) (1) (i) Except as provided in paragraph (5) of this subsection, the
27 title insurer shall during each calendar year conduct an on–site review of the
28 underwriting, claims, and escrow practices of each title insurance producer appointed
29 by the insurer as a principal agent as designated in the title insurance agency contract
30 between the insurer and the producer.

31 (ii) The on–site review shall include a review of the title
32 insurance producer’s or agency’s policy blank inventory and processing operations.

1 (iii) If the title insurance producer or agency does not maintain
2 separate bank or trust accounts for each title insurer it represents, the title insurer
3 shall verify that the funds held on its behalf are reasonably ascertainable from the
4 books of account and records of the title insurance producer or agency.

5 (2) A written report setting forth the results of the on-site review
6 shall be prepared by the title insurer and is subject to examination under § 2-205 of
7 this article.

8 (3) If, as a result of the examination, a title insurer has reasonable
9 cause to believe that a title insurance producer or agency has engaged in any of the
10 prohibited activities set forth in § 10-126 of this subtitle, the title insurer shall report
11 in writing the suspected violation to the Commissioner and submit a copy of the
12 examination.

13 (4) The examination required under this section is in addition to any
14 examination conducted by the Commissioner to determine compliance with the
15 accounts maintained for the benefit of the Maryland Affordable Housing Trust under §
16 22-103 of this article.

17 (5) The title insurer is not required to perform the on-site review of a
18 title insurance producer for the calendar year during which the title insurance
19 producer is initially appointed if the appointment is made on or after June 30 of that
20 calendar year.

21 **(N) NOTWITHSTANDING SUBSECTIONS (E) AND (G) OF THIS SECTION, A**
22 **TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR WHO ~~IS THE AGENT~~**
23 **PROVIDES ESCROW CLOSING OR SETTLEMENT SERVICES THAT MAY RESULT IN**
24 **THE ISSUANCE OF A TITLE INSURANCE CONTRACT FOR OR ON BEHALF OF A**
25 **TITLE INSURANCE PRODUCER IS NOT REQUIRED TO FILE A BLANKET FIDELITY**
26 **BOND, BLANKET SURETY BOND, OR LETTER OF CREDIT WITH THE**
27 **COMMISSIONER.**

28 **[(n)] (O)** In addition to any requirements under Title 10, Subtitle 1 of this
29 article, title insurance producers shall comply with this section.

30 10-121.1.

31 **(A)** A title insurance producer may not use or accept the services of a title
32 insurance producer independent contractor unless the title insurance producer
33 independent contractor:

34 **(1)** holds an appointment with the title insurer with which the
35 contract of title insurance may be placed; **AND**

1 **(2) IS COVERED UNDER THE TITLE INSURANCE PRODUCER'S:**

2 **(I) BLANKET FIDELITY BOND; AND**

3 **(II) BLANKET SURETY BOND OR LETTER OF CREDIT.**

4 **(B) (1) A TITLE INSURANCE PRODUCER THAT USES THE SERVICES OF**
5 **A TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR IS:**

6 **(I) THE LEGAL PRINCIPAL OF THE TITLE INSURANCE**
7 **PRODUCER INDEPENDENT CONTRACTOR; AND**

8 **(II) LIABLE FOR ALL ACTIONS OF THE TITLE INSURANCE**
9 **PRODUCER INDEPENDENT CONTRACTOR, INCLUDING UNINTENTIONAL**
10 **~~CONDUCT~~ CONDUCT, THAT OCCURS WITHIN THE SCOPE OF THE TITLE**
11 **INSURANCE PRODUCER'S INDEPENDENT CONTRACTOR'S EMPLOYMENT.**

12 **(2) ~~ANY~~ WHEN A MORTGAGE OR DEED OF TRUST IS EXECUTED BY**
13 **IN A TRANSACTION IN WHICH A TITLE INSURANCE PRODUCER INDEPENDENT**
14 **CONTRACTOR IS ACTING AS THE AGENT FOR OR ON BEHALF OF A TITLE**
15 **INSURANCE PRODUCER SHALL INCLUDE ON PRODUCER, THERE SHALL BE**
16 **INCLUDED ON OR WITH THE RECORDED MORTGAGE OR DEED OF TRUST THE**
17 **NAME, ADDRESS, AND LICENSE NUMBER OF THE TITLE INSURANCE PRODUCER**
18 **INDEPENDENT CONTRACTOR AND THE TITLE INSURANCE PRODUCER FOR**
19 **WHICH THE TITLE INSURANCE PRODUCER INDEPENDENT CONTRACTOR IS**
20 **ACTING.**

21 SECTION 2. AND BE IT FURTHER ENACTED, That:

22 (a) The Maryland Insurance Commissioner shall:

23 (1) study, in consultation with the title insurance industry, the
24 feasibility of establishing a guaranty fund or other mechanism for compensating
25 consumers and title insurers who have money that is held in escrow in connection with
26 a real estate transaction stolen by a title insurance producer;

27 (2) adopt regulations specifying the manner in which a title insurer
28 conducts the annual on-site review required under § 10-121(k) of the Insurance
29 Article of the underwriting, claims, and escrow practices of each title insurance
30 producer appointed by the insurer as a principal agent; and

31 (3) examine the current rate review and approval process for title
32 insurance premiums, including the appropriateness of including operating expenses as
33 a component of the total rate charged and whether additional factors, such as

1 underwriting losses, loss ratios, and combined ratios, should be considered when
2 reviewing title insurance rates.

3 (b) On or before December 31, 2010, the Commissioner shall report to the
4 Senate Finance Committee and the House Economic Matters Committee, in
5 accordance with § 2-1246 of the State Government Article, on the status of the
6 regulations and findings of the study and examination required under subsection (a) of
7 this section.

8 SECTION 3. AND BE IT FURTHER ENACTED, That:

9 (a) The Maryland Insurance Administration and the Department of Labor,
10 Licensing, and Regulation shall:

11 (1) (i) develop a document, entitled "The Title Insurance
12 Consumer's Bill of Rights", that explains a consumer's rights and responsibilities in a
13 real estate transaction closing;

14 (ii) make the document available on their websites; and

15 (iii) adopt regulations requiring that the document be provided
16 to a consumer at the same time that a good faith estimate is given to a consumer in
17 connection with a mortgage loan; and

18 (2) share information regarding complaints received involving real
19 estate closings and work collaboratively to track any patterns of problem transactions
20 or licensees.

21 (b) On or before December 31, 2010, the Administration and the Department
22 shall report to the Senate Finance Committee and the House Economic Matters
23 Committee, in accordance with § 2-1246 of the State Government Article, on the
24 status of the document, regulations, and collaboration between the Administration
25 and the Department required under subsection (a) of this section.

26 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 July 1, 2010.